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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,403	12/19/2001	Brian K. Doyle	ADV12P302A	4925

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EXAMINER
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TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/025,403

Applicant(s)

DOYLE ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,7,8,11,12,14-17,19,20,22-27,29-33,35-41,43,45-48,50,51,53-55,57,59 and 60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**Continuation of Disposition of Claims:** Claims pending in the application are 1,2,5,7,8,11,12,14-17,19,20,22-27,29-33,35-41,43,45-48,50,51,53-55,57,59 and 60.

The 112 first paragraph rejection of claims 1-2, 5-7, 11-12, 14-17, 19-20, 22-27, 29-33, 35-41, 43, 45-48, 50-51, 53-55, 57 and 59-60 is hereby withdrawn because applicant's argument is found to be persuasive.

Claims 1-2, 5,7-8,11-12,14-17,19-20,22-27,29-33,35-41,43,45-48,50-51,53-55,57,59-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cremer in view of Friedman et al and Higgins et al.

Cremer discloses a method of producing French fried potatoes from dehydrated potato granules or flakes. The dry potato product is mixed with a binder comprising starches to form a dough and the dough is placed in an extruder or other device which may form the dough into various shapes. The formed product is fried in oil. The extruded product can also be frozen and fried at a later time. (see columns 5-6) Cremer does not disclose coating the potato product with a coating comprising starch components, coating comprising flour, modified ungelatinized potato starch and dextrin in the amounts claimed, the shape having slender and elongated portion, a waffle and pancake shape, baking the product, adding egg, parfrying and then frozen, the overall thickness of not more than about 4 cm, making a waffle shape, finish-cooking in a toaster, shape which emulates slice of a natural food, predusting with dry particulate starch and adding a stabilizer as cited in claims 50,53.

Friedman et al disclose a clear coating composition for potato products. The composition comprises starch, about 5-25% dextrin and about 5-25% rice flour. The coating improves the eating quality of the fried potato product in term of crispness. The

coating also improves the crispness, toughness and tooth pack of fried product held under heat lamp. (see col 1 line 55 through col. 2 line 10)

Higgins et al disclose a coating composition for foods. They teach to add modified potato starch in amount ranging from 10-80% to adjust the crunchy texture of the coating. ( see col. 6 lines 40-52)

It would have been obvious to coat the Cremer potato product with the clear coating disclosed by Friedman et al for the advantage disclosed by Friedman et al. It would also have been obvious to add modified potato starch as taught by Higgins et al into the Friedman et al coating when it is desired to adjust the crunchy texture of the coating. Since Higgins et al do not disclose that the starch is gelatinized, it is obvious the starch is ungelatinized because that is the natural form of starch. It would have been obvious to vary the amount within the range taught by Higgins et al depending on the degree of crunchiness desired. It would also have been obvious to dust the food product with flour or starch to prevent sticking of the product to the working surface and to enhance the crispness of the product. It is well known in the art to coat food product with flour or starch before frying to make the product crispy. It would also have been obvious to make the product in any shape and form including waffle and pancake shape', this is a matter of design form and would have been a matter of preference. French fries products come in many different shapes and Cremer teaches the dough can be formed into various shapes. It would also have been obvious to make the product to have any varying thickness depending on the texture desired. Thin product gives a crunchy texture while thicker product gives a more mealy texture; one can

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choose thin, thick or any variance in between. It would have been obvious to add a stabilizer such as gum or carboxymethylcellulose or carrageen to control the viscosity of the dough. All these additives are well known thickening agents that are commonly added to dough product. Adding an additive for its art-recognized function would have been obvious to one skilled in the art. It would have been obvious to par-fry the product before freezing to reduce the reheating time when the product is ready for consumption. This concept is well known in the art. It would have been obvious to use any known cooking device for reheating. A toaster oven is well known to be used to reheat many products including pizza, tater tots, roll etc...It would have been obvious to bake the product instead of frying when one wants to reduce the fat content of the product. Cremer teaches to add a binder to the dough; thus, it would have been obvious to add egg to enhance the binding because egg is a commonly used binding agent.

In the response filed 4/17/06, applicant argues Cremer teaches away from combining with the Friedman et al coating because Cremer teaches adding a binder to provide the advantages of adding greater mechanical strength and less breakage; thus, there is no motivation to add the Friedman coating to improve crispness. This argument is not persuasive. The Cremer product is a fried potato product; this the same type of product disclosed in Friedman et al. The one desirable property of fried potato product is crispness; thus, it is not seen how one would not be motivated to add a coating in which the crispness of the product is improved. Applicant has not presented any evidence to show that fried potato product with improved mechanical strength and less breakage is not desirable to be crispy. Applicant has not shown any contrary evidence

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between strength and crispness. Furthermore, the coating of Friedman et al prevents deleterious effects when the fried product is held under heat lamp. Thus, one would also be motivated to add such coating when the product is to be held under heat lamp. Applicant further argues coating typically imbibes frying oil thereby increasing its fat content. This argument is not supported by factual evidence; it is not known if the coating in the publication is the same as the one disclosed by Friedman et al.

Furthermore, the selection between taste and fat content is a matter of choice by one skilled in the art based on preference between taste and nutrition. Any product that is fried will imbibe oil; even if the coating causes more oil to absorb, it would still have been obvious to one to apply the coating if the preference for crispness and holding property outweighs the concern for fat content. Applicant further argues there is no reasonable expectation of success. The coating of Friedman et al is applied to potato product; the Cremer product is a potato product; thus, there is no reason to expect the coating cannot be applied to the Cremer product. If a product has a shape and is not fluid, a coating can be applied thereon.

With respect to the Higgins et al, applicant argues that Higgins et al teach that modified potato starch will affect the clearness of the coating; thus, one would not be motivated to use this component to create a coating that would be substantially clear. It is not known precisely what degree of clearness is covered by "substantially clear". While Higgins et al might imply that modified potato starch affects clearness, there is no disclosure that potato starch takes away completely the clearness. The clearness inherently depends on the amount used and the other components present in the

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coating. It would have been obvious to one skilled in the art to balance the amount of potato starch in conjunction with crunchiness and the degree of clearness desired. As evidence by applicant's claims and disclosure, the inclusion of potato starch does not take away the clearness because the claimed coating contains potato starch and is stated to be substantially clear. Applicant also questions which component of the Friedman et al coating should the potato starch be substituted for. It is not suggested to substitute a component for the potato starch; it would have been obvious to add the potato starch as additional component to the Friedman et al coating.

Applicant's arguments filed 4/17/06 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

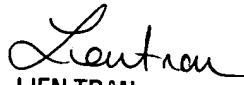


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

June 24, 2006

  
LIEN TRAN  
PRIMARY EXAMINER  
